UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MARISA BRUNETT,

Plaintiff,

v. Case No: 6:19-cv-1450-Orl-41GJK

NIRVANA HEALTH SERVICES, INC., SHAM MAHARAJ, NIRVANA SPORTS MEDICINE AND REHABILITATION SERVICES, LLC, and LEO MENDEZ,

Defendants.

REPORT AND RECOMMENDATION[1]

Pending before the Court is Plaintiff's Motion for Entry of Default Final Judgment against Defendants, Nirvana Health Services, Inc. and Sham Maharaj (Doc 38). Upon consideration, I respectfully recommend that the motion be denied as premature.

On October 1, 2019, Plaintiff filed an amended complaint against Defendants Nirvana Health Services, Inc. ("Nirvana Health"), Sham Maharaj, Nirvana Sports Medicine and Rehabilitation Services, LLC ("Nirvana Sports"), and Leo Mendez (Doc. 19). Plaintiff alleges violations of the Family Medical Leave Act, 29 U.S.C. § 2601, *et seq.*, including interference with her right to take leave and retaliation for taking leave (Counts I and II), and violations of the Consolidated Omnibus Budget Reconciliation Act (COBRA) 29 U.S.C. § 1162, *et seq.*, and Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (ERISA) (Count III) (Doc. 19). All counts are asserted against all Defendants (Doc. 19 at 12-17). Following service of the amended complaint, Nirvana

[1] Judge Smith is temporarily handling this case for Judge Kelly.

Sports filed an answer and affirmative defenses (Doc. 29). The claims against Mendez are currently stayed due to his filing a suggestion of bankruptcy (Doc. 27). Following service on Maharaj and Nirvana Health and noting no appearances, Plaintiff moved for and obtained clerk's defaults against them (Docs. 33-37).

Discussion

In cases involving more than one defendant, it has been held that a judgment should not be entered against a defaulting party alleged to be jointly liable, until the matter has been adjudicated with regard to all defendants. Frow v. De La Vega, 82 U.S. 552 (1872). Moreover, if the plaintiff prevails against the nondefaulting defendants, she is entitled to judgment against both the defaulting and nondefaulting defendants, but if the nondefaulting party prevails against the plaintiff, in most cases, that judgment will accrue to the benefit of the defaulting defendant, unless the defense is personal to that defendant. See Frow, 15 U.S. at 554, holding:

> [I]f the suit should be decided against the complainant on the merits, the bill will be dismissed as to all the defendants alike—the defaulter as well as the others. If it be decided in the complainant's favor, he will then be entitled to a final decree against all. But a final decree on the merits against the defaulting defendant alone, pending the continuance of the cause, would be incongruous and illegal.

Cf. Drill South, Inc. v. Int'l Fidelity Ins. Co., 234 F.3d 1232, 1237 n. 8 (11th Cir. 2000) (citation omitted) (noting that "Frow has been interpreted to apply only where there is a risk of inconsistent adjudications."). This district has followed Frow and declined to grant default judgments when there is a risk of inconsistent adjudications. See, e.g., Regions Bank v. Campus Developmental Research Sch., Inc., No. 6:15-CV-1332-ORL-41DAB, 2016 WL 3039650, at *3 (M.D. Fla. Feb. 11, 2016), report and recommendation adopted, 2016 WL 3033515 (M.D. Fla. May 27, 2016); N. Pointe Ins. Co. v. Glob. Roofing & Sheet

Metal, Inc., No. 6:12-CV-476-ORL-31, 2012 WL 5378740, at *1 (M.D. Fla. Oct. 31, 2012); Freeman v. Sharpe Res. Corp., No. 6:12-CV-1584-ORL-22, 2013 WL 686935, at *2 (M.D. Fla. Feb. 7, 2013), report and recommendation adopted, No. 6:12-CV-1584-ORL-22, 2013 WL 686986 (M.D. Fla. Feb. 26, 2013) ("In cases like this one, where there are multiple defendants, judgment should not be entered against a defaulted party alleged to be jointly liable, until the case had been adjudicated with regard to all the defendants."). In this circuit, it is also "sound policy" that "when defendants are similarly situated, but not jointly liable, judgment should not be entered against a defaulting defendant if the other defendant prevails on the merits." Gulf Coast Fans v. Midwest Elecs. Imp., 740 F.2d 1499, 1512 (11th Cir.1984) (citing Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 2690, 6 James Wm. Moore et al., Moore's Federal Practice, ¶ 55.06).

Nirvana Sports, which is alleged to have committed the violations with the other Defendants (Doc. 19 at 12-17), asserts fifteen affirmative defenses (Doc. 29 at 21-24). In this posture, entering default judgment against Maharaj and Nirvana Health raises the risk of inconsistent adjudications. As the co-Defendant is actively defending the case on the merits, entry of any default judgment is inappropriate at this stage. Absent any indication that the adjudication of liability and entry of default judgment against Maharaj and Nirvana Health is necessary at this point, proceeding in piecemeal fashion is not justified. See also Rule 54(b), FED. R. CIV. P. (noting that the Court may enter final judgment as to one or more but fewer than all claims or parties "only if the court expressly determines that there is no just reason for delay.").

For this reason, I **RESPECTFULLY RECOMMEND** that the motion be **DENIED**, **WITHOUT PREJUDICE** to reassertion of the motion, if appropriate, upon the conclusion of the case.

Notice to Parties

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1. If the parties do not object to this Report and Recommendation, then they may expedite the approval process by filing notices of no objection.

RECOMMENDED in Orlando, Florida, on January 8, 2020.

THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to Counsel of Record